Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States
October Term, 1994

WOODPOINTE INN ASSOCIATES LIMITED PARTNERSHIP; THOMAS A. HANDLOS; and LUCILLE HANDLOS,

Petitioners,

v.

CITY OF HARPER WOODS, a Michigan municipal corporation; JAMES R. HALEY, Mayor; JAMES E. LEIDLEIN, City Manager; GERARD OWCZARZAK, City Building Inspector; RICHARD A. EISENGRUBER, THOMAS A. KASUNIC, JAMES N. McNALLY, VICTOR G. MARROCCO, VIRGINIA ANN MICHELETTI, DAVID POCHMARA, ORESTO J. VELARDO, Members of City Council for City of Harper Woods, Jointly and Severally,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPPENDIX TO PETITION
FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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June 5, 1995

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APPENDIX TO PETITION FOR CERTIORARI

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OPINION

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

This notice is to be prominently displayed if this decision is reproduced.

(United States Court of Appeals — Sixth Circuit)

(Filed March 7, 1995)

(WOODPOINTE INN ASSOC., L.P., et al., Plaintiffs-Appellant[*s*], v. CITY OF HARPER WOODS, et al., Defendants-Appellees — No. 93-2266; ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN)

BEFORE: KEITH and NELSON, Circuit Judges, and HORTON, District Judge.*

PER CURIAM:

Plaintiffs-Appellants, Thomas A. Handlos ("Handlos"), Lucille Handlos, and Woodpointe Inn Associates ("Woodpointe," collectively "Appellants") appeal from the district court's order granting summary judgment in favor of the City of Harper Woods ("City") and its co-defendants (collectively "Appellees"). For the reasons that follow we **AFFIRM**.

I. STATEMENT OF CASE

This § 1983 action arises from a local land use dispute. Appellants sought to build a hotel on a vacant commercial lot, located near I-94 in the City of Harper

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*** The Honorable Odell Horton, United States District Judge for the Western District of Tennessee, sitting by designation.**

Woods. Appellants were required by City Ordinance to obtain a special use permit before construction of the hotel could begin. In May 1991, such special use permit was granted, provided certain conditions were met by Appellants.

Appellants failed to commence construction under the terms set forth in the permit. The City denied their request for an extension of time to complete construction. In October 1992, the City denied Appellants' reapplication for a special land use permit. Appellants thereafter, on October 5, 1992, filed a complaint in district court against the City alleging six counts: 1) a taking of property without just compensation; 2) violation of their right to equal protection under the law; 3) violation of their right to substantive due process; 4) deprivation of procedural due process; 5) unconstitutional application of municipal ordinances; and 6) conspiracy.

Defendants filed a Motion to Dismiss for failure to state a claim. On March 2, 1993, an Order was entered by Judge Bernard A. Friedman, United States District Judge for the Eastern District of Michigan, granting Defendants' Motion, in part, and dismissing Counts I, IV, V and VI. The remaining claims for violation of Appellants' right to equal protection and substantive due process, under the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983, were not dismissed pending the discovery.

In July 1993, after discovery was completed, Defendants filed a Motion for Summary Judgment regarding the remaining two claims. Judge Friedman heard oral argument from both parties on August 31, 1993, and granted the Defendants' Motion for Summary Judgment on the remaining claims of substantive due process and equal protection violations.

This timely appeal followed.

II. FACTS

Handlos purchased a vacant parcel of land (the "Property") in the City of March 1981, with the stated purpose of constructing a hotel thereon. The Property at all relevant times was zoned for commercial development. Appellees assert, without dispute, that under Section 10.164 of the City Zoning Ordinance, hotels are permitted in a general business district only after special approval, making the grant of a special use permit discretionary, rather than mandatory. Between 1981 and 1991 Handlos approached the City on numerous occasions proposing various development options for the Property.

In January 1985, Plaintiffs requested a special land use permit to develop the hotel. The permit was denied because the site plan, according to the City, did not comply with the requirements of the City's zoning ordinance. In December of that year, the City Council rejected a second request for essentially the same reasons as the first denial.

In 1986, Appellants submitted a proposal to develop a two-story office building. The initial proposal was approved by the City Planner and the Planning Commission. Inexplicably, the project was never built. In 1988, Appellants submitted a plan for a thirty-eight unit senior citizen housing development. This project, too, was never initiated.

In July 1990, Appellants again sought a special land use permit to construct a hotel on the Property. The City Council ultimately voted to approve the special land use permit on May 6, 1991, subject to certain conditions. The conditions imposed by the City were not extraordinary.

After gaining approval, subject to the conditions, the Appellants failed to develop the property. In August 1991, Appellants sent a letter to the city indicating that the size of the project would be reduced. Even though

Appellants were given a year, rather than the customary six-months to begin construction, no construction was started on the Property. On January 10, 1992, Appellants requested a one year extension of the time allowed to begin construction. This request was denied, and a subsequent request for an extension was denied.

With the deadline to begin construction fast approaching, Handlos began doing ground work on the Property. Mr. Handlos, the general partner of Woodpointe and sole known financier of the multi-million dollar project, began construction himself by wielding a sledge hammer in an effort to construct a curb cut. Appellees contend this activity brought into question his ability to properly finance the project.

Appellants' special land use permit expired on May 6, 1992. They were so notified in a letter that same day. Appellants reapplied for a special land use permit in June 1992. Prior to the City Council's determination of the latest request, Appellants filed suit in district court.

III. DISCUSSION

A. Standard of Review

This court reviews a district court's grant of summary judgment *de novo*. *Kinnie* v. *U.S.*, 994 F.2d 279, 282 (6th Cir. 1993). In reviewing a motion for summary judgment, we must consider the evidence in the light most favorable to the nonmoving party. Fed. R. Civ. P. 56; *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *Kinnie*, 994 F.2d at 281.

B. Equal Protection

Appellants correctly point out that the threshold element of an equal protection claim is disparate treatment. In order to establish an equal protection claim, Appellants must show that the alleged wrong was directed at them as a member of a class or group, singled out for discriminatory treatment. *Joyce* v. *Mavro-*

mantis, 783 F.2d 56, 57 (6th Cir. 1986). Where there is no allegation that a fundamental right has been infringed upon or that Appellants belong to a suspect class, the Defendants' actions are subject to a rational basis test. *Lakewood Ohio Congregation of Jehova's Witnesses, Inc.* v. *Lakewood*, 699 F.2d 303, 308 (6th Cir.) *cert. denied*, 464 U.S. 815 (1983). Governmental entities are accorded wide latitude in regulation of their local economies. *Curto* v. *City of Harper Woods*, 954 F.2d 1237, 1244 (6th Cir. 1992).

In order to prevail on an equal protection claim under § 1983, the Appellants must establish that they were the victims of intentional or purposeful discrimination. *See Gutzwiller* v. *Fenik, et al.*, 860 F.2d 1317, 1325 (6th Cir. 1988). In the instant case, Appellants fail to bring forth any relevant evidence that Appellees intentionally discriminated against them.

C. Substantive Due Process

Appellants next argue they were denied substantive due process. To prevail on a substantive due process claim, a plaintiff must show that the government entity is guilty of "arbitrary and capricious action in the strict sense." *Pearson* v. *City of Grand Blanc*, 961 F.2d 1211, 1221 (6th Cir. 1992). This requires a showing that the decision rendered was without any rational basis. *Id.* The plaintiff must be able to demonstrate that the alleged irrationality of the City was such that it "shocks the conscience" of the court. *Id.* at 1222. Appellants make no allegations which can be said to "shock the conscience."

IV. CONCLUSION

Upon careful review of the record, the briefs submitted by the parties and oral argument, we **AFFIRM** the decision of the Honorable Bernard A. Friedman, United States District Judge for the Eastern District of Michigan, granting summary judgment in favor of Defendants-Appellees.

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Dated September 1, 1993)

(WOODPOINTE INN ASSOCIATES LIMITED PARTNERSHIP, THOMAS A. HANDLOS and LUCILLE HANDLOS, Plaintiffs, vs. CITY OF HARPER WOODS, JAMES R. HALEY, JAMES E. LEIDLEIN, GERARD OWCZARZAK, RICHARD A. EISENGRUBER, THOMAS A. KASUNIC, JAMES N. McNALLY, VICTOR G. MARROCCO, VIRGINIA ANN MICHELETTI, DAVID POCHMARA and ORESTO J. VELARDO, Defendants — Civil Action No. 92-CV-75936-DT; HON. BERNARD A. FRIEDMAN)

On August 31, 1993, this matter came before the court on defendants' motion for summary judgment. The court has reviewed the parties' written submissions and heard oral argument. For the reasons stated on the record,

IT IS ORDERED that defendants' motion for summary judgment is granted.

/s/ BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE

Dated: SEPTEMBER 1, 1993
Detroit, Michigan

JUDGMENT

The court has granted defendants' motion for summary judgment. Accordingly,

IT IS ORDERED AND ADJUDGED that judgment be, and hereby is, entered for defendants and against plaintiffs.

JOHN P. MAYER
CLERK OF COURT

/s/ JUDIE BIRDSALL
DEPUTY CLERK

Approved: /s/ BERNARD A. FRIEDMAN
U.S. DISTRICT JUDGE

Dated: SEPTEMBER 1, 1993

CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I have on this date sent by first-class mail a copy of the foregoing Judgment and Order Granting Defendants' Motion for Summary Judgment to the following persons at the addresses indicated:

Frederick K. Hoops, Esq.
315 Hunters Square Centre
31555 W. 14 Mile Road
Farmington Hills, Michigan 48334

Barbara J. Brown, Esq.
31555 W. Fourteen Mile Road
Farmington Hills, Michigan 48334

James T. Tamm, Esq.
525 North Woodward
Bloomfield Hills, Michigan 48304

/s/ Madelyn Peruski
Secretary to Judge Friedman

Dated: SEPTEMBER 1, 1993

OPINION ON MOTION FOR SUMMARY JUDGMENT

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Proceedings of August 31, 1993)

(WOODPOINTE INN ASSOCIATES LIMITED PARTNERSHIP, a Michigan Limited Partnership, and THOMAS A. HANDLOS and LUCILLE HANDLOS, individually, Plaintiffs, -vs- CITY OF HARPER WOODS, a municipal corporation; JAMES R. HALEY, Mayor of City of Harper Woods; JAMES E. LEIDLEIN, City Manager for Harper Woods; GERARD OWCZARZAK, City Building Inspector; RICHARD A. EISENGRUBER, THOMAS A. KASUNIC, JAMES N. McNALLY, VICTOR G. MARROCCO, VIRGINIA ANN MICHELETTI, DAVID POCHMARA, ORESTO J. VELARDO, Members of City Council for City of Harper Woods; jointly and severally, Defendants — Case No. 92-CV-75936-DT; Hon. Bernard A. Friedman)

Proceedings had in the above-entitled cause before the HONORABLE BERNARD A. FRIEDMAN, United States District Court Judge, at 235 United States Courthouse, Detroit, Michigan, on Tuesday, August 31, 1993.

APPEARANCES:

For the Plaintiffs: BARBARA J. BROWN (P44320), Barbara J. Brown, P.C., 315 Hunters Square Circle, 31555 West 14 Mile Road, Farmington Hills, MI 47334;

For the Defendants: JULIE McCANN-O'CONNOR (P38484), O'Connor, DeGrazia & Tamm, P.C., 525 North Woodward Avenue, Suite 1300, Bloomfield [*Hills*], MI 48304.

* * *

(9) * * * THE COURT: In this matter, the Court, as it said, has had an opportunity to study the briefs; and it was briefed very well by both sides and the Court is very familiar with the case. It is not the first time that I

have seen it in this context and am trying to give the plaintiffs all the benefit that I can.

The Court still believes that the motion must be granted as to Count 2, which was the 1983 claim for equal (10) protection. The Court is of the belief that the motion again should be granted.

The Court believes that the relation to this particular claim, that Plaintiffs have not offered evidence that the defendants were motivated by discrimination. There just simply isn't that kind of evidence existing, and therefore the Court has to grant that part of it.

As to Count 3, which is the 1983 claim dealing with denial of substantive due process, again the Court believes that Plaintiffs have not and really cannot prove the defendants' actions regarding Plaintiffs' hotel project were so irrational that they would shock the consciousness of the Court, which is the test that the Court has to apply.

As I say, I have got a lot of feelings for the plaintiffs. I wish they could develop their property, but the Court just doesn't believe it reaches the level of this kind of constitutional violation of almost every case that I have been able to read would dictate.

Therefore, the Court grants the motion for summary judgment. The motion is to be granted on Counts 2 and 3, which were the only counts remaining. There is no reason to get into governmental immunity; therefore I won't rule on that at this point, since there is no reason.

I will enter an Order to that effect. Thank you.

(Certificate of Reporter Omitted)

ORDER GRANTING IN PART, DENYING IN PART DEFENDANTS' MOTION TO DISMISS

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Dated March 3, 1993)

(WOODPOINTE INN ASSOCIATES LIMITED PARTNERSHIP, THOMAS HANDLOS and LUCILLE HANDLOS, Plaintiffs, vs. CITY OF HARPER WOODS, JAMES R. HALEY, JAMES E. LEIDLEIN, GERARD OWCZARZAK, RICHARD A. EISENGRUBER, THOMAS A. KASUNIC, JAMES N. McNALLY, VICTOR G. MARROCCO, VIRGINIA ANN MICHELETTI, DAVID POCHMARA and ORESTO J. VELARDO, Defendants — Civil Action No. 92-CV-75936-DT; HON. BERNARD A. FRIEDMAN)

On February 24, 1993, this matter came before the court on defendants' motion to dismiss, filed December 21, 1993. The court has reviewed the parties' written submissions and heard oral argument. For the reasons stated on the record,

IT IS ORDERED that defendants' motion to dismiss is granted as to Counts I, IV, V and VI.

IT IS FURTHER ORDERED that defendants' motion to dismiss is denied as to Counts II and III.

IT IS FURTHER ORDERED that defendants' motion to dismiss based on immunity is denied.

/s/ BERNARD A. FRIEDMAN
UNITED STATES DISTRICT JUDGE

Dated: MARCH 2, 1993
Detroit, Michigan

DEFENDANTS' MOTION TO DISMISS

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Proceedings of February 24, 1993)

(WOODPOINTE INN ASSOCIATES LIMITED PARTNERSHIP, Plaintiff, v. CITY OF HARPER WOODS, et al., Defendant — CASE NO. 92-CV-75936-DT)

PROCEEDINGS had and taken in the above-entitled matter, before the Honorable BERNARD A. FRIEDMAN, United States District Court Judge for the Eastern District of Michigan, Southern Division, at U.S. Courthouse, 231 W. Lafayette, Room 235, Detroit, Michigan, on Wednesday, February 24, 1993, at or about 4:00 o'clock p.m.

APPEARANCES:

BARBARA J. BROWN, ESQ., Appearing for the Plaintiff;
JAMES T. TAMM, ESQ., Appearing for the Defendant.

* * *

(45) * * * THE COURT: Thank you. In relation to this particular matter, this is a Rule 12(b)(6) motion, which standard is different than that of the Rule 56 motion.

The Court has to look at the four corners essentially here, the pleadings. The Court will take them one at a time.

As to Count I, which is the allegations of unconstitutional taking, the Court will grant the motion.

The Court believes that this matter is not ripe at this time; that the defendants — strike that — that the plaintiffs had a duty and failed to apply for a variance, and cannot show that they have met the requisite criteria for preclusion of a[*n*] economically viable use of the property.

As to Count II, the Court — which is the equal process clause — the Court in this particular matter will deny the defendants' motion.

The Court believes that the plaintiffs do have standing to assert the rights of protected minority employees, potential employees, and at least have pled sufficiently allegations of arbitrary and capricious (46) denial of the permits. It appears that this allegation, however, is directed towards the city and not the individuals. I can't really tell.

As I say, this case was — was pled extensively, but it appears it was pled against the city, though it may have some significance in a minute.

As to Count III, substantive due process. The Court in this particular matter will also at this time deny the defendants' motion. The plaintiffs, again, have at least alleged certain things, arbitrary, capricious conduct, which is a fact matter that may shock the conscience. Again, the plaintiffs will be up to their proofs and I suspect we'll be revisiting some of these issues again.

As to Count IV, procedural due process. The Court believes that the motion of the defense should be granted.

The Court believes that from reading of the pleadings and so forth that the oppurtunity for a fair and meaningful hearing prior to the denial of the report appears to be apparent even based upon the attachments and everything else — that it appears to be apparent.

As to Count V, which deals with the ordinance. The Court will also grant that motion.

The Court believes that there's nothing that (47) would give rise to — and, again reading it in the light most favorable to the plaintiff — to nongovernmental legitimate interests or unreasonable means for advancing those interests.

As to the Count VI, which is the conspiracy under 1985. The Court will grant the motion in relation to this particular matter because the Court believes that the plaintiffs in this matter are not members of the class

suffering the discrimination that they allege and, therefore, it must be dismissed.

As to the governmental immunity portion — and we're really talking about the qualified immunity. The Court believes that qualified immunity in this particular matter extends to the executive conduct and that the defense in this matter has the burden of the good faith in relation to this matter.

However, the issue — and, again it's not clear. We may have to — anyhow, at this time the Court is going to deny it based upon the qualified immunity. But the issue — and you may want to clarify it somewhere down the line — if there are now other constitutional allegations against the individuals, then obviously qualified immunity would be moot.

And I think that, as to the equal protection, it appears the way it's pled, but I can't really tell and, (48) therefore, I think at this time I have to err in favor of the plaintiffs. But the way it's pled, at least at this point it appears to be a moot question because the only constitutional issue left is the equal protection. And, if that isn't against the individuals, then qualified immunity, as I say, is moot. But at least at this time, to recap, the following order will be entered:

1. As to Count I, the Court will grant it.

As to Count II, the Court will deny it.

As to Count III, the Court will deny.

As to Count IV, the Court will grant.

As to Count V, the Court will grant.

As to count dealing — not the count, but the issue dealing with governmental immunity, the Court will deny that at this time.

All the issues, of course, are denied without prejudice since this is a Rule 12(b)(6) motion.

Okay. Anything that I have not included that should be included? I think I've covered all the issues.

Yes?

MS. BROWN: On the six count of conspiracy, did you grant or deny that motion?

THE COURT: Conspiracy, I granted.
MS. BROWN: Okay.
THE COURT: Okay. Anything else?
(49) MR. TAMM: Thank You, Your Honor.
THE COURT: Good. Thank you. We'll do the order.
THE CLERK: All rise, please. This Court is in recess.
(matter concluded)

(Certificate of Reporter Omitted)

EXHIBITS ATTACHED TO PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(United States District Court —
Eastern District of Michigan —
Southern Division)

(Filed August 13, 1993)

(WOODPOINTE INN ASSOCIATES LIMITED PARTNERSHIP, THOMAS A. HANDLOS and LUCILLE HANDLOS, Plaintiffs, vs. CITY OF HARPER WOODS, JAMES R. HALEY, JAMES E. LEIDLEIN, GERARD OWCZARZAK, RICHARD A. EISENGRUBER, THOMAS A. KASUNIC, JAMES N. McNALLY, VICTOR G. MARROCCO, VIRGINIA ANN MICHELETTI, DAVID POCHMARA and ORESTO J. VELARDO, Defendants — Civil Action No. 92-CV-75936-DT; HON. BERNARD A. FRIEDMAN)

–EXHIBIT F–
LETTER FROM JAMES McNALLY TO "NEIGHBOR"
(December 15, 1984)

Dear Neighbor December 15, 1984

A hotel project is being proposed for the triangular property where Harper crosses the freeway. The proposal also calls for demolishing several homes to create parking lots. Many of your neighbors oppose the plan; we ask you to join us in showing our opposition at a public hearing to be held by the Harper Woods City Council on Monday, January 7, 1985, at 7:30 p.m., at the Municipal Building, 19617 Harper.

The Project

The hotel, a five-story building called the "Woodpointe Inn," is being proposed by local real estate agent Thomas A. Handlos. According to the site plan filed with the city, it will include meeting rooms and a restaurant/lounge, in addition to 69 guest rooms. The structure

and some parking would be contained within the triangle.

Additional parking lots, however, would be located across Harper in the residential neighborhoods. The following homes would be torn down and the property used as parking lots: 20824 Ridgemont, and 20831, 20832 and 20847 Hollywood. Commercial buildings on Harper are not affected.

Access to and from the hotel would be from Northbound Harper only. Employees and guests would use sidestreets and alleys to get to the parking lots in the neighborhoods.

Our Objections

Many objections have been stated. Some of the common objections are:

1. A 5-story hotel does not fit within the general character of the neighborhood and will depress property values.
2. Traffic on Harper, which is bad enough already, will get worse.
3. Children crossing Harper will be endangered, as there is no traffic control.
4. A hotel would attract undesirable people and would place them in our neighborhoods via the parking lots.
5. The project is too big to fit in such a small space.
6. There will be increased noise day and night from traffic, activity in the parking lots, loading dock operations, and garbage trucks.
7. There is no guarantee that the hotel will be run by honest, considerate people or that future uses of the building will be acceptable to the neighbors.

8. It is unnecessary to tear down houses, especially when the developer could confine all parking on-site through the use of a parking structure.

9. Confused out-of-town drivers will not understand the traffic patterns, and will ignore one-way streets and pedestrian crossings.

10. A hotel would drain city services.

These are only a few of our objections. There are, of course, many other reasons to oppose the project.

Public Hearing

By law, the Council must conduct a hearing at which the public can express its views. To this point, the developer has been able to work closely with city officials to have his project approved. The residents have not had a similar opportunity. This is our chance to make our voices heard.

At the meeting, the Council will hear all sides of the argument. The Council must then determine whether to (1) approve the "special land use" which would permit Mr. Handlos to put a hotel on the triangle, and (2) approve the use of residential property as parking lots.

If we do not stop the project now, the Council will approve it and we will be unable to stop it later. We urge you to attend the public hearing and show your concern.

James N. McNally
20832 Ridgemont

-EXHIBIT J-

FLIERS AND BROCHURES PREPARED BY JAMES McNALLY
(December, 1984-January, 1985)

JAMES N.
McNALLY for COUNCIL

- Harper Woods resident since 1960; 34 years old
- Son of former Judge James N. McNally III and Joan (Mannino) McNally Eldest of Nine Children
- Attorney with office on Harper in Harper Woods; experienced in state and Federal trial and appellate courts
- Attended Tyrone Elementary School, Harper Woods Junior High School, Harper Woods High School; Graduated from Notre Dame High School
- Bachelor's Degree in Business Administration from Michigan State University (1979)
- Juris Doctor Degree from Detroit College of Law (1982)
- Former Law Clerk, Michigan Court of Appeals and Wayne County Circuit Court
- Member, American Bar Association, State Bar of Michigan. Michigan Library Association, Friends of Harper Woods Public Library
- President of Harper Wods Public Library Board of Directors
- Married to former Stathia Vitinaros; one child, Mary Elizabeth McNally

I am opposed to any merger of the police and fire departments. I do not believe a merger would save tax money, and I believe the specialized nature of each job mandates that fire fighters keep fighting fires, and police officers keep fighting crime.

Although in these financially difficult times the City must look for new and imaginative ways to raise money to maintain the high quality of services to which we are accustomed, I oppose the recent "garbage fees." I believe they are, in essence, new

taxes which violate the Headlee Amendment by denying you the opportunity to vote.

I possess a unique blend of academic achievements, community background, and professional experience. I hope you will elect me to the Harper Woods City Council so that I may represent your concerns on the Council. Although I disagree with some current City policies and practices, I pledge to work in a cooperative fashion to assure that Harper Woods remains the best place to live.

Jim McNally

Paid for by the Committee to Elect James N. McNally, Jr.,
20394 Harper, Harper Woods, MI 48225

Please vote Tuesday, November 5

WHO CARES ABOUT YOUR NEIGHBORHOOD?

JIM McNALLY DOES!

Your neighborhood has tradionally been underrepresented in Harper Woods city government. As a result, we have seen uncontrolled development create a dumping ground for unwanted businesses north of Vernier.

As a Ridgemont resident from 1984 to 1991, Jim McNally understands the frustration you feel about incessant car alarms and loud fast food restaurants with blaring drive-through speakers. He knows the dangerous traffic patterns and is concerned about the safety of your children. He has seen you beautify your homes only to find fast food wrappers strewn on your lawns.

Even as a private citizen, Jim McNally has worked to improve your neighborhood. He led the opposition to the proposed Hotel project on Harper six years ago. The Harper Woods City Council rejected the planned construction. Despite overwhelming community opposition, however, two council members voted to approve the project: Mayor James Haley and Councilwoman Virginia Michiletti. Both are presently running in this election.

In 1986 the hotel developer threatened to put a fast-food restaurant on his site if the hotel were rejected. Jim McNally suggested a new ordinance limiting the number of fast food restaurants near each other. The City Council approved that ordinance, and the developer's threat was blocked.

The developer returned to the City Council in 1991 with yet another hotel proposal. This time, the Council approved the project with a May 1992 deadline for commencement of construction. Mayor James Haley and Council members Virginia Michiletti, Victor Marrocco, and Richard Eisengruber voted for the project. *All four are running in this election.* When the developer later sought approval of a liquor license, the Council approved his request "above all others."

This City Council has ignored your opinions and your neighborhood. You deserve to have your voice heard. Election day is Tuesday, November 5. We urge you to get out and vote, *and to vote for Jim McNally.*

Paid for by the Committee to Elect James N. McNally, Jr.,
20394 Harper, Harper Woods, MI 48225

If you would like to show your support for these issues by posting a lawn sign for McNally for Council, please call 881-3798 and leave your name and address on our answering machine.

Thank you for voting . . .

JAMES N.
McNALLY
for
COUNCIL

- Attorney; resident since 1960
- Opposed to "garbage taxes"
- Against Hotel project
- Against merger of police & fire departments

Paid for by the Committee to Elect James N. McNally, Jr.,
20394 Harper, Harper Woods, MI 48225

-EXHIBIT GG-
EXCERPTED DEPOSITION OF BRANDON ROGERS
(June 22, 1993)

* * *

(43) * * * Q. Your statement that the plan almost exactly complies with the zoning ordinance, do you still agree with that statement, did it?

A. It probably did then and the most recent (44) plan that was submitted met the design standards in the zoning ordinance regarding setbacks and parking and building height, you know.

Q. Because my Exhibit Number 7 that I showed you, which is quite extensive, and I don't expect you to read it all, had quite a few issues raised by McNally, who was a City Council member. He stated several areas where the plan did not comply with the zoning ordinance, and my question to you is whether you believed the issues he raised to be significant enough to deny the project. And I'm going to go through just a couple of them. He mentioned that it was an unsanitary proposal. And with your review of the project, do you find anything unsanitary about this proposal?

A. I don't render that opinion. I refer it to the City Administration, DPW Director, and the City Engineer and they make that decision on the adequacy of sanitary sewage or storm water runoff.

Q. He also mentioned that the walls and the side yards had to be five feet from the property line.

MR. EADS: Object to the form and the foundation of that question and I don't believe it's within his province to testify in this regard. (45) Additionally, I don't think there's been an adequate foundation laid regarding these statements, when they were said, what they were in regards to. If you feel you can answer the question, please do.

A. I don't know what you're talking about ma'am.

Q. This issue was raised by you in December of 1984 where the newspaper said that you said there are two

minor variances; however, that the Planning Commission has recommended an approval of. One regards off-street loading spaces, two of which are smaller than the required size. The other concern is the side yard next to one of the parking lots, which would only be 7 feet instead of the required 10 feet. I can't see any good purpose that would be made by making it 10 feet.

A. That was the old plan.

MR. EADS: Subject to the obvious heresay objection.

A. That was the old plan back in '84 where there was off-street premises across Harper, where because of the size of the lots and the adjacent development it's quite possible that 7 versus 10 feet was a reasonable variance to allow efficient use of that parking lot. I don't believe (46) Mr. McNally was referring to that earlier plan, he was referring to the more recent plan where there was no off-premises parking and there were no side yard setback variances. That's the only thing I can surmise, because I don't know what you're reading from and I wasn't at the Council meeting and I can't recall what McNally said.

Q. From your experience working with the City has it always required strict compliance with the zoning ordinance?

MR. EADS: Object to form.

A. I recommend compliance, but in certain hardship cases a developer or property owner has the legal right to appeal for a variance from the Zoning Board of Appeals.

Q. Did you review the plan — strike that. I have a quote from the East Side Advertiser Times dated October 28, 1991 where you were reported to have said that you recommended the Planning Commission pass the new proposal. Quoting, "In my report I am going to recommend the plans be passed. As far as I am concerned, it meets every ordinance's standard set by the City." Do you recall making that statement?

A. I was referring to the zoning ordinance and (47) that plan did meet the zoning ordinance's design standards. How could I say it met the entire City Code of Ordinances? That's something for the administration to determine.

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-EXHIBIT HH-

EXCERPTED DEPOSITION OF JOHN SOULLIER

(June 22, 1993)

* * *

(14) * * * Q. Have you been in favor of the hotel project being built on that piece of property?

(15) A. Yes.

MR. EADS: At what time?

MS. BROWN: Always.

A. If I recall correctly, the planning commission voted, I believe it was unanimous in every instance, for every plan that Mr. Handlos submitted. That's from memory now, you could get a copy of the minutes.

Q. I think you're right.

A. I sometimes can't remember what I had to eat for dinner last night.

Q. You believed the City of Harper Woods could benefit from a hotel being built on that piece of property?

MR. EADS: Object to the form of the question.

A. From memory now, we were told this — this must have been back in 1984, I think, when the first plan was submitted, I remember being informed by somebody, probably Mr. Handlos or his architect or representative, that a study had been made by a hotel chain and the gist of its study, as I recall, was that a hotel was needed in this general area. Not relating to this Woodpointe Inn site necessarily but in the area, and, of course, Woodpointe Inn fitted (16) right into that study.

Q. Okay.

A. So that I looked upon it as a good thing, and I think by our vote the whole planning commission was in favor of it.

Q. What about economically, do you think that — did you think it would economically benefit the City?

A. It would bring more tax revenue.

* * *

(34) * * * Q. What about the ladder trucks, do you recall reviewing whether the ladder trucks — whether there would be a fire hazard because the ladder trucks couldn't get in?

A. Well, as I told you earlier, each department is contacted, police department, fire department, the DPW, on any construction petition, and our consultant, Brandon Rogers, attends a meeting when all the departments, including our city manager, are in attendance. Then Brandon Rogers summarizes what each department has said and if the fire department says, "Hey, we can't get a truck through there", then that's no go.

Q. So when Brandon Rogers approves projects —

(35) A. He does not approve.

Q. When he recommends a project, that's only after, to your knowledge, as much as you're aware, it's your understanding that he's already consulted all these departments?

A. That's a given, yes.

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-EXHIBIT II-

EXCERPTED DEPOSITION OF NEIL PATTERSON

(June 23, 1993)

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(12) * * * Q. Can you explain briefly to me what you can recall in regard to the history of the Woodpointe Inn?

A. Just that it's been before us numerous times, before the Planning Commission. We've approved it every time.

Q. Were you personally in favor of a hotel project on that site?

(13) A. Yes, I approved it every time over the years.

Q. Did you believe that particular site could facilitate a hotel?

A. Well, in my mind I questioned the size, but legally it met all the zoning ordinances and I've always approved it.

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-EXHIBIT JJ-

EXCERPTED DEPOSITION OF ALEXANDER VARCHETTI

(June 23, 1993)

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(16) * * * Q. Were you always in favor of the hotel project?

A. It always met the ordinance criteria, yes.

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